

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MUR 7113
5 Power of Liberty, Inc.)
6)
7

8 **SECOND GENERAL COUNSEL'S REPORT**

9
10 **I. ACTIONS RECOMMENDED:**

11 We recommend that the Commission: (1) enter into pre-probable cause conciliation with
12 Power of Liberty, Inc. ("Respondent" or "Power of Liberty"); (2) approve the attached
13 conciliation agreement; and (3) approve the appropriate letter.

14 **II. BACKGROUND:**

15 On November 14, 2017, the Commission found reason to believe that Power of Liberty
16 violated 52 U.S.C. § 30104(f) of the Federal Election Campaign Act of 1971, as amended (the
17 "Act"), and 11 C.F.R § 104.20(b) by failing to file complete and accurate disclosures for
18 electioneering communications ("ECs") disseminated 30 days before the August 4, 2016,
19 Republican primary election in Tennessee.¹

20 The Office of General Counsel conducted an investigation to determine the amount
21 Power of Liberty spent on ECs. The investigation revealed that Power of Liberty spent \$63,125
22 on ECs in Tennessee's Sixth and Eighth Congressional Districts that aired during the 30 days
23 before the primary election, \$60,490 of which was either reported untimely to the Commission,
24 or not reported at all.

¹ Certification (Nov. 14, 2017).

III. SUMMARY OF THE INVESTIGATION

During the investigation, Respondent submitted digital recordings of the radio ads that referenced federal candidates, radio station contracts, and sales orders for the radio ads at issue, and a cancelled check for one of the ad buys.² We also reviewed Federal Communication Commission filings for the radio ad time Respondent bought, and we confirmed with Respondent which ad buys were made for the federal election during the relevant time period, which was July 4 through August 3, 2016.³

Regarding the Sixth District ads, the investigation confirmed that Power of Liberty made three disbursements to four radio stations in Nashville to broadcast ads that referenced congressional candidates Diane Black and Joe Carr.⁴ On May 26, 2016, Power of Liberty entered into contracts for radio ads that aired between June 1, 2016, and August 3, 2016, and made \$46,037 in disbursements for ads that aired during June 2016.⁵ On July 15, 2016, Power of Liberty made disbursements totaling \$51,204 for ads that aired between July 11 and August 3, 2016.⁶ On August 1, 2016, Power of Liberty made a disbursement of \$2,635 for ads that aired

² See Email from Steve Gill to Camilla Jackson Jones, Attorney, FEC (Feb. 21, 2018, 3:42 PM EST) ("Feb. 21, 2018 Gill Email"); Email from Steve Gill to Camilla Jackson Jones, Attorney, FEC (Apr. 10, 2018, 1:43 PM EST) ("Apr. 10, 2018 Gill Email"); Email from Steve Gill to Camilla Jackson Jones, Attorney, FEC (May 23, 2018, 2:18 PM EST) ("May 23, 2018 Gill Email"), Attach. (showing breakdown of purchases made for radio ad buys in June 2016 – August 2016), Email from Steve Gill to Camilla Jackson Jones, Attorney, FEC (June 21, 2018, 2:48 PM EST) ("June 21, 2018 Gill Email"), Attach. (showing breakdown of amounts spent on radio ad buys for each month).

³ May 23, 2018 Gill Email. See 52 U.S.C. § 30104(f)(3)(establishing 30-day EC window for primary elections).

⁴ See F&LA at 2-3. The radio stations were owned by PEG Broadcasting, Cookville Communications, Salem Broadcasting, Cumulus, and Cumulus Nashville. See Cumulus Nashville (WWTN) Sales Order (May 26, 2016), Cumulus Nashville (WKFD) Sales Order (May 26, 2016), Cumulus Nashville (WGFX) Sales Order (July 15, 2016).

⁵ June 21, 2018 Gill Email, Attach.

⁶ *Id.*

1 on August 1- 3, 2016. Power of Liberty admits that it paid for the Sixth District radio ads
2 referenced in the Complaint, and the ads it bought ran two to three times a day on four different
3 Nashville radio stations, Mondays through Fridays, from July 11-22, 2016, and from August 1-3,
4 2016.⁷

5 In total, Power of Liberty spent \$99,876 in the Sixth District for radio ads that referenced
6 federal candidates during the 2016 election cycle, of which \$53,839 were for ads that aired
7 within 30 days of the election.

8 Regarding Eighth District ads, Power of Liberty admits to paying \$12,421 for radio ads
9 that aired in that district between July 1-29, 2016, and which referenced congressional candidates
10 Mark Luttrell and Brian Kelsey.⁸ Of that amount, Respondent spent \$9,286 on radio ads in the
11 Eighth District that aired within 30 days of the election.⁹

12 Thus, Power of Liberty spent \$63,125 on ads that aired within 30 days of the primary.
13 On August 4, 2016, Power of Liberty filed a single 24-Hour EC Statement for \$34,690 in
14 disbursements, which disclosed \$32,055 in disbursements for ads that aired in July-August 2016,

⁷ Apr. 10, 2018 Gill Email; May 23, 2016 Gill Email.

⁸ Respondent also provided information about other communications it made in the Eighth District regarding different federal candidates, but states it ran no television or radio ads regarding these candidates during the 30-day window. See Email from Steve Gill to Camilla Jackson Jones, Attorney, FEC (Oct. 24, 2018, 2:34PM EST). In particular, Respondent explained that, contrary to FCC forms indicating that it ran ads mentioning David Kustoff, see First Gen. Counsel's Rpt. at 5-6, it never actually purchased the ad time. *Id.* We did not discover any information refuting Respondent's statements.

⁹ See Emails from Steve Gill to Camilla Jackson Jones, Attorney, FEC (Oct. 24, 2018, 1:06PM and 5:32 PM EST) ("Oct. 24, 2018 Gill Emails"), Attachments.

1 and \$2,635 in disbursements for radio ads made that aired August 1-3, 2016.¹⁰ Power of Liberty
2 did not file any other 24-Hour Statements for its disbursements during the 2016 election.¹¹

3 **IV. DISCUSSION**

4 The Act defines an EC as any “broadcast, cable, or satellite communication” that
5 references a “clearly identified” federal candidate, is distributed “within 30-days before a
6 primary . . . election,” and is “targeted to the relevant electorate.”¹² “Broadcast, cable, or
7 satellite communication” includes any communication publicly distributed over a radio station.¹³

8 The Act provides that every person who pays for the “direct costs of producing and airing
9 electioneering communications in an aggregate amount in excess of \$10,000 during any calendar
10 year shall, within 24 hours of each disclosure date, file with the Commission” an appropriate
11 disclosure report.¹⁴ The regulation defines “disclosure date” as “the first date on which an
12 electioneering communication is publicly distributed provided that the person making the
13 electioneering communication has made one or more disbursements, or has executed one or more
14 contracts to make disbursements [for ECs] aggregating in excess of \$10,000” or “any other date

¹⁰ The August 4 Notice did not identify a corresponding federal candidate, which prompted the Commission's Reports Analysis Division (“RAD”) to send Power of Liberty a Request for Additional Information (“RFAI”) regarding the report, to which Power of Liberty did not respond. *See*, First GCR at 2; *see also* 24-Hour Notice of Disbursements/Obligations for Electioneering Communications, Power of Liberty (Aug. 4, 2016), <http://docquery.fec.gov/pdf/312/201608049022178312/201608049022178312.pdf>. *See* RFAI to Power of Liberty (Aug. 30, 2016), <http://docquery.fec.gov/pdf/909/201608310300057909/201608310300057909.pdf>. Power of Liberty's agent asserts that he did not receive any communications from the Commission prior to the RTB Notification Letter, and RAD has no record of any conversations with Power of Liberty regarding the RFAI. Power of Liberty made a partial disclosure of \$32,055 of its July 4-29, 2016 expenditures along with its disclosure of its August 1, 2016 disbursements for \$2,635 on its 24-Hour Notice, filed August 4, 2016. Apr. 10, 2018 Gill Email; June 21, 2018 Gill Email, Attach.

¹¹ May 23, 2016 Gill Email.

¹² 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a).

¹³ 11 C.F.R. § 100.29(b)(1).

¹⁴ 52 U.S.C. § 30104(f)(1); 11 C.F.R. §§ 104.5(j), 104.20(b).

1 during the same calendar year” that the person making the EC has made one or more
2 disbursements or executed one or more contracts for the direct costs of producing or airing ECs
3 aggregating in excess of \$10,000, since the most recent disclosure date.¹⁵ Thus, any
4 disbursements for ECs that exceed \$10,000 and air within 30 days of an election must be
5 disclosed to the Commission within 24 hours of the date on which the ECs are first distributed.

6 The 30-day window for EC reporting in this case began on July 4, 2016. During that
7 period, Power of Liberty held contracts for and paid for ECs totaling \$63,125, which began
8 airing in the Sixth and Eighth Districts on July 4. Of that amount, Power of Liberty should have
9 disclosed \$60,490 in ECs, and it should have disclosed them on July 16, the day after Power of
10 Liberty’s ads aggregating in excess of \$10,000 began airing.¹⁶

11 Power of Liberty admits that it failed to meet this reporting requirement as it did not file
12 any disclosures for these ECs until August 4, the date of the relevant election.¹⁷ It presents a
13 variety of explanations for its reporting failure, none of which obviate the violation. First, Power
14 of Liberty asserts that it knew it had to report ad buys made within 30 days of the election, but
15 did not understand that it also had to disclose ad buys made more than 30 days before the
16 election if the ads aired within the 30-day window and met the \$10,000 threshold.¹⁸ Second, it
17 states that it did not realize that it had to file EC reports if the ads mentioned a federal candidate,
18 even if they only related to issues.¹⁹ Third, Respondent asserts it was inexperienced in reporting

¹⁵ 11 C.F.R. §§ 104.20(a)(i)-(ii).

¹⁶ 11 C.F.R. § 104.20(b); Apr. 10, 2018 Gill Email; May 23, 2016 Gill Email; Oct. 24, 2018 Gill Emails

¹⁷ May 23, 2016 Gill Email.

¹⁸ *Id.* See also Emails from Steve Gill to Camilla Jackson Jones, Attorney, FEC (Oct. 24, 2018, 1:06PM and 5:31 PM EST) (“Oct. 24, 2018 Gill Emails”), Attachments.

¹⁹ See Emails from Steve Gill to Camilla Jackson Jones, Attorney, FEC (Oct. 24, 2018, 2:42 PM EST and 5:31 PM EST).

1 ECs, but did not intend to avoid disclosure, as it reported its ad buys to the FCC and filed a 24-
2 Hour Notice with the Commission.²⁰ Fourth, Power of Liberty states that it has made no
3 disbursements for federal elections since the August 1 ad buys, it is working with RAD to file
4 accurate disclosures for the 2016 primary election cycle, and its only federal activities during the
5 2016 cycle were the ECs at issue here.²¹

6 Power of Liberty admits it misunderstood its reporting obligations under the Act and
7 regulations, which required reporting based on the date that ads aggregating over \$10,000 were
8 publicly distributed.²² Thus, Respondent should have disclosed the \$60,490 it spent for ECs no
9 later than July 16, 2016.²³ However it did not file or disclose any ECs until August 4, 2016, and
10 its report was incomplete.²⁴

²⁰ Apr. 10, 2018 Gill Email; May 23, 2016 Gill Email.

²¹ *Id.*

²² 11 C.F.R. § 104.20(a).

²³ Respondent's \$2,635 EC purchase on August 1, 2016 was less than the \$10,000 threshold, so it did not require a 24-Hour Notice.

²⁴ Power of Liberty's mistaken belief that the disclosure requirement was tied to the date of purchase, not the date of distribution does not explain why the 24-Hour notice it filed on August 4 only disclosed \$34,690 of the disbursements for radio ads that ran from July 4 to August 3.

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12 **VI. RECOMMENDATIONS**

13 1. Enter into conciliation with Power of Liberty Inc. for its violations of 52 U.S.C.
14 § 30104(f) and 11 C.F.R. § 104.20(b) for failure to file timely disclosure reports for
15 its electioneering communications prior to a finding of probable cause to believe;


16 2. Approve the attached conciliation agreement; and

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3. Approve the appropriate letters.

2.21.19
Date

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